

1 September 12, 1997

2
3 **REP Program Strategic Review Steering Committee**
4 **Concept paper: Delegated State**
5

6
7 **ISSUE**
8

9 Can a structured program within which States are delegated exercise evaluation
10 responsibilities traditionally performed by FEMA be developed such that reasonable
11 assurance can continue to be assured and efficiencies through streamlining achieved?
12

13 In any restructured REP program, FEMA must continue to provide the NRC with its
14 determinations on reasonable assurance unless there is a change in NRC regulations (10 CFR
15 50.47). This regulation, however, does not specifically state how FEMA will make
16 reasonable assurance determinations. The operative question is the method of gathering
17 information which FEMA uses to make these site-specific reasonable assurance findings.
18 The current method is outlined in 44 CFR 350 and the FEMA-NRC Memorandum of
19 Understanding.
20

21 Reasonable assurance findings are comprised of two components:
22

- 23 (1) FEMA must determine that plans and preparedness are adequate to protect the health
24 and safety of the public living in the vicinity of the nuclear power facility by
25 providing reasonable assurance that appropriate protective measures can be taken
26 offsite in the event of a radiological emergency.
27
- 28 (2) FEMA must determine that plans and preparedness are capable of being implemented
29 (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and
30 qualifications, and equipment adequacy.)
31

32 **BACKGROUND**
33

34 In an effort to restructure the FEMA REP program to make it more efficient and effective,
35 during the initial SRSC meeting, a working group was tasked to explore the feasibility of
36 FEMA modeling the REP program on aspects of the NRC agreement State program.
37

38 Members of the SRSC pointed out that several other Federal agencies/departments have
39 programs which are implemented by the States with oversight provided by the Federal
40 government. In addition to the NRC Agreement State program, examples are: the EPA
41 permitting programs for the Clean Air and Clean Water Acts; the OSHA safety and health
42 program; the USDA meat and poultry inspection program; and the FDA mammography
43 program.

ANALYSIS/DISCUSSION

Basic Program Outline

- (1) Under a Delegated State Program, FEMA would continue to make site-specific reasonable assurance determinations and provide those findings to the NRC.
- (2) States would apply to become Delegated States on a voluntary basis and FEMA would review and approve (or deny) such requests.
- (3) A Delegated State would assume responsibility for exercise evaluation and provide a detailed Annual Letter of Certification (ALC) each year.
- (4) FEMA would provide a limited oversight role to the State's activities which would include supplemental verifications and review of the ALC.

A discussion of Impact is included in Appendix 1, and a summarization of the NRC Agreement State Program is included in Appendix 2.

Recommended Application Process

The Delegated State Program would be a voluntary program, but 44 CFR 350 approval would be required of States that apply. By definition, this approval means that reasonable assurance exists regarding a State's capabilities. Requiring 350 plan approval for each entrant to the Delegated State program provides a common foundation for all applicants. Such a requirement further lends a tangible benefit to obtaining a 350 plan approval. FEMA should work with States that are interested in obtaining 44 CFR 350 approval for the purpose of gaining Delegated State status.

NUREG-0654/FEMA-REP-1 would continue to be the basic guidance document for the REP program, for both Delegated States and other REP States. Thus, a State's adherence to NUREG-0654/FEMA-REP-1 and having plans consistent with it would remain unchanged.

To initiate the process, the Governor, or designee, would request approval to be a Delegated State from FEMA. The State would have to meet certain criteria outlined by FEMA for participation. The original application could include:

- (1) a commitment to use REP 14/15 (or the applicable variant endorsed by FEMA),
- (2) an exercise/drill schedule in conformance with NUREG-0654/FEMA-REP-1, Planning Standard N,
- (3) a commitment to use a standard exercise report format,
- (4) a commitment to hold a public meeting in the vicinity of the plant to discuss exercise results following a full-scale exercise,

- (5) a discussion of the corrective action program to resolve drill and exercise deficiencies (i.e., inadequacies which directly affect the health and safety of the public) within 120 days (Note: It may be useful for FEMA to compile multiple examples of deficiencies and areas requiring corrective action (ARCA) for use by Delegated States in an attempt to achieve consistency among them),
- (6) a commitment to maintain plans and procedures in conformance with NUREG-0654/FEMA-REP-1, Planning Standard P,
- (7) a commitment to use a standard format for the Annual Letter of Certification,
- (8) information regarding the appropriate level of staffing and training for evaluation of exercises,
- (9) a statement that in-state coordination has occurred among stated departments, including emergency management, radiological health (responsible for dose assessment/projection), and other jurisdictions within the 10 mile EPZ, and
- (10) a commitment to apply exercise credit consistent with FEMA's policy (see discussion later in paper).

Past performance could also be considered in granting Delegated State status. For example, there should be no outstanding exercise deficiencies at the time of the application to the program and an acceptable Annual Letter of Certification should have been submitted for the previous year.

Based upon FEMA's approval of the State's proposal, a State would be designated a Delegated State. If there is a shortfall in the application package, FEMA would identify it to the State and provide assistance in improving the shortfalls.

Program Implementation

Once the State receives approval, it would begin its own planning for conducting and evaluating its own exercises. No extent-of-play agreements would need to be negotiated with FEMA. Each year, the State would be required to provide an ALC with details on completion of periodic requirements and changes to the program. The ALC would also contain the exercise report with issues explained and discussion of corrective actions taken. A standard ALC format would be required for all Delegated States, perhaps requiring an update to Guidance Memorandum PR-1.

The ALC with cover letter from the appropriate State official would become the non-exercise vehicle for documenting compliance with periodic requirements and continued reasonable assurance. The appropriate State official would certify in each ALC cover letter that (1) reasonable assurance continues to exist, (2) there has been no loss of the ability to meet planning standards, and (3) the program does not contradict any regulatory requirements. These assertions would be based on compliance with periodic requirements, correction of exercise issues, and/or no programmatic changes that affected reasonable assurance, and this basis would be provided in the ALC.

1
2 In examining the ALC, FEMA could rate each function as outlined in the ALC (defined in
3 Section C, page 8, of Guidance Memorandum PR-1, "Policy on NUREG-0654/FEMA-REP-
4 1/FEMA-REP-1 and 44 CFR 350 Periodic Requirements," or its revision). Suggested ratings
5 could be acceptable, acceptable with recommendations for improvement, or unacceptable.
6 Once each function is rated, there would be an overall finding provided on reasonable
7 assurance.

8
9 The reasonable assurance finding could be described in one of three ways: (1) reasonable
10 assurance exists (consider decreasing verification frequency; State continues to evaluate its
11 own exercises), (2) reasonable assurance exists but program needs improvement (State
12 continues to evaluate its own exercises), or (3) reasonable assurance does not exist. FEMA's
13 review of the ALC would determine whether followup discussions are required with the State
14 as REP partners. In the latter instance, the State would develop improvement strategy/tactics
15 in cooperation with FEMA, NRC, and other cognizant RAC agencies to upgrade its program
16 with timing consistent with 44 CFR 350 to reestablish reasonable assurance. FEMA could
17 perform an oversight role by assisting in evaluation at the next exercise to ensure program
18 adequacy. If the deficiencies are severe enough or not appropriately corrected, FEMA could
19 take other action up to and including removing delegated State status.

20
21 These findings could be made using in-house staff with assistance from appropriate FRPCC
22 agencies and with minimal contractor support for technical areas. FEMA would need to
23 ensure consistency in REP regional staff review.

24
25 The ALC would also contain the changes to the State's and locals' plans. (These changes
26 are required to be submitted by 44 CFR 350, Section 350.14(c) and (d).) In this way, FEMA
27 would remain aware of how plans are evolving and allow FEMA to provide any needed
28 overview in this regard.

29 30 Delegating the Evaluation Function

31
32 The primary function that would be delegated and which is central to the Delegated State
33 program is the evaluation function. The basic premise would be that States would evaluate
34 their own exercises utilizing the current FEMA-endorsed methodology (e.g., a revised REP
35 14/15 or applicable variant endorsed by FEMA). In doing their own evaluations, States
36 could utilize other State and local personnel as their evaluators as long as these persons meet
37 the evaluator criteria defined for the program. States may also request supplemental
38 assistance by FEMA if they desire; FEMA participation would be based on its interest and
39 availability. The program may also contain provisions that FEMA provide a small cadre of
40 evaluators to observe an exercise or assist in evaluation based on lack of reasonable
41 assurance arising from earlier exercise findings.
42

Any evaluation methodology utilized by a State would require trained evaluators and an exercise report (e.g., the SERF as potentially modified for Delegated States) that describes issues identified and proposed corrective actions.

Evaluated aspects of the REP program would be included in delegated responsibilities even if done out of sequence from a regularly scheduled exercise (e.g., medical drills or alert and notification tests).

Delegated State Program and Credit Policy

A recommendation resulting from the Strategic Review may be that FEMA implement a standard national policy outlining under what circumstances responses to actual events can be granted credit for REP-required activities. Delegated States following this to-be-developed national credit policy would be permitted to apply it to their exercises. States would document an after-the-fact discussion of how they applied the credit policy as part of their ALC submittal. (The original application package would also include a commitment to adhere to the national FEMA credit policy.) FEMA, in its review of the ALC, would have an opportunity to review the use of the credit policy. Any questions could be addressed to the State. If FEMA identifies inadequacies in the application of the credit policy, FEMA could opt to require some remedial action.

Supplemental Verifications by FEMA of Aspects of Delegated State Programs

FEMA may opt on a two- to three-year basis to verify limited portions of a Delegated State's program. Potential areas for verification include:

- (1) the training plan for responders to ensure conformance with NUREG-0654/FEMA-REP-1, Planning Standard O,
- (2) the drill/exercise evaluation plan (e.g., evaluator locations, source of evaluators) and methodology which utilizes REP 14/15 (or its revision),
- (3) the plan and procedure maintenance program in conformance with NUREG-0654/FEMA-REP-1, Planning Standard P,
- (4) the roster of key staff for each responding offsite response organization, and
- (5) periodic visits to assess facilities, equipment, and training.

This aspect of the program could be tailored such that States with positive performance history could have verifications performed less frequently than other States and conversely those not performing as well as could have verifications performed more frequently.

Financial Issues

REP program funding is provided by utilities in the form of user fees to FEMA. In the Delegated State program, funding could be modified such that (1) FEMA passes through some of this money which could be earmarked for the REP program in Delegated States to the Delegated States or (2) the utilities provide money directly to the States which could have been provided to FEMA otherwise. Option (1) may not be a viable option because if the amount of money provided to FEMA by utilities is based on the amount of REP hours spent on a particular facility, the number of FEMA REP hours could decrease in a Delegated State. Therefore, FEMA would not have the REP money to pass through to the State.

REP and the Performance Partnership Agreement (PPA)

Inclusion of the REP program in a State's PPA for a Delegated State could remain optional analogous to the current option of States to either include or not include their REP program into the PPA. Therefore, the Delegated State choice would not affect the State's choice regarding including REP in its PPA.

Non-Delegated States

States other than Delegated States would continue to be evaluated by FEMA in a revised REP program. FEMA would continue to evaluate the State offsite exercises and produce the exercise report with recommendations to correct identified weaknesses. Non-delegated states would require a similar level of effort as currently expended by FEMA to assess reasonable assurance. If a non-delegated State did not submit an ALC, FEMA would have to collect data which would normally be included in an ALC (now typically done when State performance is an issue).

Advantages of the Delegated State Program

Assuming the proper controls are in place, what could be advantages to the States for FEMA to offer a Delegated State Program?

- (1) States would have much greater flexibility in conducting their radiological emergency preparedness program. Once the State meets specific criteria and is designated a Delegated State, it would still be responsible for offsite preparedness. However, their methods and procedures would not be prescribed by FEMA (beyond basic program requirements). Therefore, Delegated States would have greater control over how they implement the REP Program. Delegated States could focus more on results. The Delegated State Program provides the possibility for flexibility in exercise evaluation (no Federally-negotiated extent of play agreements) and correction of exercise issues (not responding to FEMA recommendations). Delegated States would have more ownership of the program.

- (2) One of the conditions for Delegated State approval could be that the site must have been granted 44 CFR 350 approval. This could be a minimum threshold indicative of FEMA having completed and accepted a review of their plans. Therefore, the 44 CFR 350 approval process could take on greater importance and more States may be interested in seeking this approval.
- (3) The Annual Letter of Certification would take on increased importance as the primary document FEMA would review to assess reasonable assurance. The Delegated State would be required to submit the ALC documenting exercise evaluation and other aspects of their program.
- (4) The Delegated State program could reduce FEMA resources needed for the REP program because those Delegated States would be doing their own exercise evaluations. This could be a significant streamlining of the REP program and associated resources while allowing a greater level of REP staff assistance and REP policy work.
- (5) In a Delegated State program, the individuals most knowledgeable about a program would be evaluating it. This could be a significant advantage in terms of program efficiency and identification of meaningful findings (as well as ownership of those findings).

Potential Disadvantages of a Delegated State Program

- (1) States would be evaluating their own programs and thus evaluating themselves. If not properly implemented, this could be detrimental to the REP program.
- (2) States would not have ready access to FEMA experience and knowledge. (Although an increase in staff assistance may alleviate this disadvantage.)
- (3) Without additional funding, State resources may not be sufficient to implement a Delegated State program.
- (4) FEMA could be administering a "dual system" including delegated and non-delegated states.

Pilot Program

Because of the significant change envisioned by the Delegated State concept, a pilot program would be implemented. Lessons learned from the pilot program would determine if and how the Delegated State program would be fully implemented.

Appendix 1

Impact

If the model of the NRC Agreement State program (or other similar Federal agency program) is adopted *in whole or in part*, FEMA's oversight role in the REP program could change significantly. Roles of the FEMA headquarters and regional REP staff, and States would be redefined. Additional training would probably be required at all levels.

Should the Agreement State model be adopted, *in whole or in part*, it is likely that numerous guidance documents would need revision as well as 44 CFR 350 and the NRC-FEMA MOU.

As with the NRC Agreement State program and other similar Federal programs, there is potential that some States, by not having 350 approval for all or some plans (i.e., those with interim findings), would not become REP "Agreement States," thus there would need to be a parallel REP program administered by FEMA for those States (or sites because 350 approval is site specific).

Appendix 2

Summary of NRC Agreement State Program

Authority

The NRC Agreement State program is legislatively authorized by the Atomic Energy Act, as amended. The OSHA, EPA, and USDA programs are also legislatively authorized.

NRC Agreement State Program

The NRC program is designed to relieve the NRC of regulating certain classes of radioactive materials licenses among Agreement States. States voluntarily submit their programs for Agreement State status (voluntary submission is also found in the OSHA and Clean Water Act programs). In Agreement States, the States issue licenses, assess fees to licensees, and inspect licensees. Regulation of nuclear power plants is not included in the Agreement State program. In those States which are not Agreement States, the NRC regional office regulates the licensees. The NRC does not provide funding to Agreement States and in some cases will charge an Agreement State for technical assistance. The NRC Agreement State program is not a delegated program, that is, the NRC “cedes” its regulatory authority. Funding is not provided the Agreement States, training is not funded and is only provided on a space available basis in NRC courses. OSHA and EPA differ in that they do provide some funding, specific direction to their programs, and training.

Program Characteristics

How does a State become an Agreement State? This is a voluntary program. States must have a “compatible” (with NRC standards) and “adequate” (to protect public health and safety) radiation control program. This includes State statutes, regulations, and trained staff. The NRC reviews the State program and, if approved, there is a signing ceremony and phased-in State regulation.

Number of NRC Agreement States: There are currently 29 NRC Agreement States. This represents approximately 15,000 radioactive materials licenses, which is about 70 percent of all the radioactive materials licenses issued in the United States.

Advantages of Agreement State status:

- 1) fulfills intent of Atomic Energy Act, as amended
- 2) State radiation control agencies have the option to regulate almost all radiation sources normally regulated by the NRC (except nuclear power plants)
- 3) Regulatory agency is closer to licensees and can generally be more responsive to licensees

- 1 4) enhances core of knowledgeable persons at State level
- 2 5) single regulatory agency for most users
- 3 6) in general, fees charged to licensees are lower
- 4 7) decreased requirements placed on NRC

5

6 Disadvantages of Agreement State status:

7

- 8 1) States must fund program administration
- 9 2) some licensees may still be subject to more than one regulatory agency
- 10 3) requires coordination between NRC and States
- 11 4) requires parallel program administered by NRC in non-agreement States

12

13 Methods of NRC Oversight

14

15 The NRC maintains oversight using the following methods:

16

- 17 1) NRC approves new Agreement States
- 18
- 19 2) Assesses compatibility and adequacy of Agreement States periodically, using the
- 20 Integrated Material Performance Evaluation Program (IMPEP). This is a team (a national
- 21 cadre which includes both Federal and State staff) which performs evaluations of the
- 22 program periodically (anywhere from 2-4 years - based on past performance record of the
- 23 state). NRC has developed measurable performance indicators related to 5 areas: status of
- 24 materials inspection program, technical staffing and training, technical quality of licensing
- 25 actions, technical quality of inspections, and response to incidents and allegations.
- 26
- 27 3) Exchanges regulatory and safety information with Agreement States, e.g., telephone,
- 28 conferences, correspondence, workshops)
- 29
- 30 4) provides technical assistance, as deemed appropriate (there are some cases where the NRC
- 31 will charge the Agreement State for this service)
- 32
- 33 5) trains State personnel on a space available basis

34

35 Other Federal programs similar to the NRC Agreement State program use similar means to

36 provide oversight (e.g., review/approve plans, on-site visits, review various state reports).

37

38 Possible Application of Agreement State Concept to FEMA REP Program

39

40 Most states have voluntarily submitted their plans for 350 approval. Such approval would be

41 a prerequisite for entry to the "Agreement State" program. Of the 69 sites, there are currently

42 only 12 sites for which a State does not have 350 approval. Those sites are:

43

1	Vermont Yankee	Limerick
2	Seabrook (MA.)	Three Mile Island
3	Pilgrim	Susquehanna
4	Artificial Island (NJ)	Diablo Canyon
5	Beaver Valley (PA)	San Onofre
6	Peach Bottom	WNP-2

7
8 These sites without 350 approval (interim findings) would be evaluated by FEMA in a
9 parallel program. FEMA would evaluate all exercises and produce the report with
10 recommendations to correct identified weaknesses. FEMA would increase its role in
11 monitoring State programs which do not have 350 approval (i.e., actually document first-
12 hand State compliance with periodic requirements).

13
14 There are certain aspects of the current FEMA REP program which could possibly be used to
15 restructure the REP program along the lines of the NRC Agreement State program and other
16 similar Federal programs. However, there is a significant difference between the REP
17 Program and the other agency programs. The other agency programs involve State oversight
18 of third parties, like hospitals, private industries, etc., not the States themselves. If FEMA
19 were to relinquish some of its REP authority to the states, the States would essentially be
20 monitoring themselves. This distinction needs to be kept in mind when examining parts of
21 the REP program that could be devolved to the states.